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No. 06-5754

Supreme Court, U.S.
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IN THE SUPREME COURT OF THE UNITED STATES

VICTOR A. RITA, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner contends that, on review pursuant to United States v. Booker, 543 U.S. 220 (2005), a federal court of appeals should not treat a sentence within the advisory Sentencing Guidelines range as presumptively reasonable. A number of petitions for a writ of certiorari have recently been filed challenging the application of a presumption that sentences within a properly calculated advisory Guidelines range are reasonable on appellate review. As the government has explained in briefs in opposition to those petitions, according a Guidelines sentence a presumption of reasonableness is consistent with Booker and with the Sentencing Reform Act of 1984, 18 U.S.C. 3551 et seq., and does not make the

Guidelines effectively mandatory; it is not clear that reasonableness review is materially different in circuits that have adopted the presumption than in those that have not; and petitions raising presumption-of-reasonableness challenges need not be held pending the disposition of Cunningham v. California, No. 05-6551, cert. granted (Feb. 21, 2006). See, e.g., Gov't Br. in Opp. at 7-15, Guzman-Balbuena v. United States, No. 05-10634, 2006 WL 2089475 (filed June 29, 2006); Gov't Br. in Opp. at 13-21, Artis v. United States, No. 05-10431, 2006 WL 1733084 (filed June 19, 2006). Accordingly, for the reasons set out in the briefs in opposition to those petitions, the petition for a writ of certiorari should be denied.*

'AUL D. CLEMENT
Solicitor General

AUGUST 2006

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* The government waives any further response to the petition unless this Court requests otherwise.